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NO.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

REVEREND THEODORE R. LITTLE, JR.,
Petitioner,

v.

FIRST BAPTIST CHURCH, CRESTWOOD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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5 cpies

QUESTION PRESENTED

Whether the actions of the trial court in issuing a temporary decree of injunction and a permanent decree of injuction without receiving any evidence or argument proffered by the petitioner, while refusing to schedule and hear any evidentiary matters, constituted a denial of due process?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

Reverend Theodore R. Little, Jr.,

Petitioner,

v.

First Baptist Church, Crestwood,

Respondent.

On Writ of Certiorari To the Supreme Court of Virginia

To the Honorable, the Chief Justice and Associate Justices of the United States.

Reverend Theodore R. Little, Jr., the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia entered in the above-entitled case on November 22, 1985.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is unreported and is reproduced in Appendix A hereto, infra, page 1a.

STATEMENT OF JURISDICTION

The jurisdiction of the Court is invoked under 28 USC Section 1257 (3).

STATUTORY PROVISIONS INVOLVED

United States Constitution Fourteenth Amendment, Section 1: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

STATEMENT OF THE CASE

Petitioner is both Pastor and member of the First Baptist Church, Crestwood, which is a congregationalist Church located in Chesapeake, Virginia, and which is governed by the majority rule of its members. Petitioner was first employed by majority vote of the members on December 21, 1982. Petitioner was subsequently twice reappointed to his position by majority votes of the members, the last such vote having occured in February of 1984. Petitioner's original employment was in the form of a written contract for one year which stated "if the Church and the Pastor agree then this call is indifinite (sic)". See Appendix B hereto, infra, page 1b.

During 1984 a dispute arose within the church, and in November 1984, certain members acting in their individual capacity and without authority to bind or represent the church or the majority of its members filed a petition in the church's name seeking a temporary and permanent injunction from the Circuit Court of the City of Chesapeake to enjoin petitioner from "disrupting and taking over the church."

Petitioner timely filed his answer together with a Plea in Bar stating that he was the duly elected Pastor of the church and that the individuals petitioning in the church's name for an injunction against him were without authority to bring such an action on behalf of the church.

This matter originally came on for hearing on the Motion Docket of the Circuit Court of the City of Chesapeake on December 18, 1984, at 9:15 a.m. pursuant to respondent's petition for injunction and notice of same, and pursuant to petitioner's response to petition for injunction and petitioner's plea in bar. Presiding was Judge William H. Hodges. Present were Robert R. Carter, Esquire, (attorney for respondent), Reverend Theodore R. Little, Jr., (petitioner), Michael S. Weisberg, Esquire, (attorney for petitioner), and approximately 200 interested persons. No court reporter was present. (A written statement in lieu of transcript of these, and all other, proceedings in the Circuit Court,

signed by Judge William L. Forbes, is reproduced in Appendix C hereto, infra, page 1c).

The Court informed the parties that this matter had been placed upon its Motion Docket and there was, therefore, insufficient time to hear evidence in the case. Accordingly, no witnesses were sworn and the offering of no evidence was permitted by the Court. The Court entered an injunctive order, over petitioner's objection, enjoining the petitioner from going upon the property of the First Baptist Church, Crestwood, or interfering in Church affairs, for a period of sixty days. The Court also, despite petitioner's objection, entered a decree of reference appointing James A. Overton Commissioner and directing him to

conduct a vote of the membership of the First Baptist Church, Crestwood on January 6, 1985, for the purpose of determining if the services of the Reverend Theodore R. Little, Jr. should be terminated as Pastor of the Church.

Commissioner Overton conducted an election at the Church on January 6, 1985, as ordered by the Court, and rendered his report thereof to the Court on January 9, 1985. On January 17, 1985, petitioner, by counsel, timely filed Exceptions to the Commissioner's Report on several grounds, including the grounds that the Decree of Reference requiring said meeting was too narrowly drafted in that it limited the Commissioner's scope of inquiry solely to the conducting of a vote and was issued

without due process as it was entered without petitioner having been afforded his day in court to be heard on his Plea in Bar to the original petition for temporary injunction. (For purposes of Rule 21 (h) of this court, this was the first raising of a federal question by petitioner). Petitioner prayed that the recommendations of the Commissioner in Chancery be overruled, that the Decree of Reference be vacated, and that the case be reinstated upon the docket of the Court for a plenary evidentiary hearing relative to the petitioner's response, plea in bar, and on the merits of the case.

On respondent's notice and motion for entry of a permanent injunction order overruling petitioner's exceptions to the Commissioner's

report and petitioner's prayer for a plenary hearing, a hearing was scheduled on the Court's Motion Docket for January 30, 1985, at 12:15 p.m., in the Circuit Court of the City of Chesapeake, before Judge William L. Forbes. Present were Robert A. Carter, Esquire (attorney for respondent), Reverend Theodore Little, Jr.. (petitioner), and Michael S. Weisberg, Esquire, (attorney for petitioner). No court reporter was present.

The Court overruled petitioner's exceptions to the Commissioner's report and denied petitioner's prayer for a plenary hearing. No witnesses were sworn and the offering of no evidence of any kind was permitted by the Court. The Court entered a permanent decree of injunction

enjoining Reverend Theodore Little, Jr., from going onto the property of the First Baptist Church, Crestwood, and interfering in the affairs of the Church.

Petitioner timely filed an appeal to the Supreme Court of Virginia seeking review of the federal question whether petitioner had been denied due process under the fourteenth amendment to the Constitution of the United States, requesting said Court to reverse the decree of injunction of the Circuit Court of the City of Chesapeake and requesting that this case be remanded to the Circuit Court for a proper trial and hearing. The Supreme Court of Virginia refused petitioner's appeal on November 22, 1985.

REASONS FOR GRANTING THE WRIT

I.

THE TRIAL COURT ERRED IN DENYING THE PETITIONER THE OPPORTUNITY TO PRESENT ANY EVIDENCE IN SUPPORT OF HIS RESPONSE TO PETITION FOR INJUNCTION AND HIS PLEA IN BAR.

The right of a defendant to a hearing in a civil trial, and the legal duty of the Court to afford a defendant such a hearing, are guaranteed by the due process clause of the Fourteenth Amendment to the Constitution of the United States and by the due process clause of Article I, Section 11 of the Constitution of Virginia.

Mr. Justice Harlan, in delivering the opinion of this court in Boddie v. Connecticut, 401 U.S. 371 (1970), summarized this subject as follows:

"Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "[w]herever one is assailed in his person or his property, there he may defend," Windsor v. McVeigh, 93 U.S. 274, 277 (1876). See Baldwin v. Hale, 1 Wall. 223 (1864); Hovey v. Elliott, 167 U.S. 409 (1897). The theme that "due process of law signifies a right to be heard in one's defence," Hovey v. Elliott, supra, at 417, has continually recurred in the years since Baldwin, Windsor, and Hovey. [See Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Armstrong v. Manzo, 380 U.S. 545 (1965); Schroeder v. New York, 371 U.S. 208, 212 (1962); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 338 (1963); Covey v. Town of Somers, 351 U.S. 141 (1956); Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950); Anderson Nat. Bank v. Luckett, 321 U.S. 233, 246 (1944); Opp Cotton Mills v. Administrator, 312 U.S. 126, 152-153 (1941); Morgan v. United States, 304 U.S. 1 (1938); United States v. Illinois Central

R. Co., 291 U.S. 457, 463 (1934); Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930); Coe v. Armour Fertilizer Works, 237 U.S. 413, 423 (1915); Londoner v. Denver, 210 U.S. 373, 385-386 (1908); Louisville & Nashville R. Co. v. Schmidt, 177 U.S. 230, 236 (1900)]. Although "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause," as Mr. Justice Jackson wrote for the Court in Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950), "there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id., at 313. Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance, see Windsor, supra, at 278, or who, without justifiable excuse, violates a procedural rule requiring the production of evidence necessary for orderly adjudication, Hammond Packing Co. v. Arkansas, 212 U.S. 322, 351 (1909). What the Constitution does require is "an opportunity granted at a meaningful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing

appropriate to the nature of the case," Mullane v. Central Hanover Tr. Co., supra, at 313. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. [Compare Goldberg v. Kelly, supra, with In re Winship, 397 U.S. 358 (1970). See also Bowles v. Willingham, 321 U.S. 503, 520-521 (1944)]. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, [Goldberg v. Kelly, supra, Sniadach v. Family Finance Corp., supra; Opp Cotton Mills v. Administrator, supra, at 152-153; United States v. Illinois Central R. Co., supra, at 463; Coe v. Armour Fertilizer Works, supra] except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. [Cafeteria & Restaurant Workers Union v. McElroy 367 U.S. 886 (1961); Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950); Fahey v. Mallonee, 332 U.S. 245 (1947); Bowles v. Willingham, supra; Yakus v. United States, 321 U.S. 414 (1944)]. In short, "within the limits of practicability," id., at 318, a State must afford to all

> individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." Id. at 377.

The right under the due process clause to a full hearing includes the right of the party whose rights are sought to be affected to introduce evidence and to have judicial findings based upon it. Baltimore and O.R. Co. v. United States, 298 U.S. 349 (1935); Louisville and N.R. Co. v. Finn, 235 U.S. 601 (1914); Washington ex rel Oregon R.& N. Co. v. Fairchild, 224 U.S. 510 (1911).

The right to confront and cross examine witnesses is a fundamental aspect of procedural due process. Wolff v. McDonnell, 418 U.S. 539 (1973); Jenkins v. McKeithen, 395 U.S. 411 (1968); Willner v. Committee on Character and Fitness, 373 U.S. 96 (1962)and such right applies not only

in criminal proceedings, but also in noncriminal proceedings. (See 81 Am. Jur. 2d Witnesses Sec. 464)

The right has been extended by this court to include administrative and quasi-judicial proceedings. (See 2 Am. Jur. 2d Admin. Law Sec. 424).

In Reverend Little's case there was no countervailing state interest of overriding significance requiring that his right to a hearing be denied; there was no failure to appear or failure to proffer evidence in accordance with procedural rules by Reverend Little; there was no waiver of his right to a hearing by Reverend Little; there was no extraordinary situation where some valid governmental interest was at stake that justified postponing Reverend Little's hearing until after a certain

event; neither was this an administrative or quasi-judicial procedure wherein Reverend Little's rights might conceivably have been conformed to some lesser standard of due process.

Reverend Little's right to a hearing was denied him in a duly constituted State court of this land for no apparent reason save the convenience of the court. This denial persisted from the beginning to the end of this proceeding, and as a result Reverend Little was deprived of his religious and property rights without ever having had an evidentiary hearing of any kind. For this reason this court should remand this case to the Circuit Court of Chesapeake for a

trial in accordance with constitutionally guaranteed minimal standards of due process.

II.

THE SUBMISSION OF PETITIONER"S CONTRACTUAL PROPERTY RIGHTS TO A VOTE AT THE CHURCH DID NOT CONSTITUTE DUE PROCESS OF LAW.

The procedure whereby the Circuit Court abrogated Reverend Little's employment contract and deprived him of his property rights, cannot be considered to constitute due process within the meaning of the Fourteenth Amendment. Instead of being afforded his day in Court, with all of the rights and safeguards to which he was entitled under the Common Law and the Constitution of the United States, Reverend Little was subjected to an

extra-judicial determination of his rights, which included his property rights (termination of employment and pay), his civil rights, and his freedom to practice his religion, all without due process of law.

What happened to Reverend Little is analogous to the executive of a Corporation who signs a contract of employment with the Corporation and then has his contract abrogated by a vote of the stockholders at an extraordinary meeting, without due notice, in which the very question of which persons should qualify as stockholders entitled to vote is in dispute.

The original Petition for Injunction filed with the Chesapeake Circuit Court by the respondent herein referred to Reverend Little's written

contract of employment and attached a copy thereof. The petition then alleged "insubordination" on the part of Reverend Little, alleged a termination of Reverend Little's contract, and a refusal on the part of Reverend Little to "terminate his services".

Reverend Little, in his Plea in Bar and in his Response to Petition for Injunction responded that he was employed through a majority vote of the members of the association, challenged the actions of the respondents herein as being without authority of the association, and denied that he had received duly authorized notice of termination of his employment contract.

Thus, in the first instance, the Circuit Court of Chesapeake had before it a civil contract dispute--

specifically, a dispute over an employment contract involving property rights in the form of salary owed and owing.

Instead of addressing the contract question on its merits, instead of inquiring as to the terms of the contract, instead of hearing testimony concerning alleged breaches of the contract, instead of eliciting evidence as to the procedural requirements and conditions for terminating the contract, the court abdicated its judicial responsibility and referred the contractual dispute to a vote. Compounding this error, the court, in its Decree of Reference, unlawfully imposed membership qualifications, voting requirements and election procedures upon the church which were

in contravention and conflict with church policies and religious beliefs on which those policies are based.

Thus, not only did the Chesapeake Circuit Court deprive Reverend Little of his civil rights and property without due process, it also unlawfully interfered in ecclesiastical affairs which are outside the jurisdiction of a civil court.

Why the Chesapeake Circuit Court acted in this way is not clear. The court never gave any reason for its Injunctive Order or its Decree of Reference. Nevertheless, assuming that the court intended to be mindful of this court's guidelines in the matter of the jurisdiction of civil courts to deal with religious organizations, and more specifically with disputes arising within such organizations, and more

specifically still with contract and property disputes involving religious organizations, the Chesapeake Circuit Court did not follow rulings presently mandated by this court, nor practices generally followed by other courts.

This Court has found no violation of the establishment clause of the First Amendment of the Constitution in the use of civil courts by religious organizations to decide disputes, particularly disputes as to civil, contract and property rights. Jones v. Wolf, 443 U.S. 595 (1979); Watson v. Jones, 13 Wall. 679 (1872). This Court has only asserted a want of jurisdiction to hear and determine any controversy relating to the purely ecclesiastical or spiritual features of

a church or religious society. Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1975).

The guiding principle in the settling of church contract and property disputes is that "no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith "be involved". Maryland and Va. Churches v. Sharpsburg Church, 396 U.S. 367 at 368 (1970). The courts must apply "[n]eutral principles of law, developed for use in all property disputes." Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 at 449 (1969). This "neutral principles of law" approach was cited with approval in Jones v. Wolf, supra,

which is today the foremost decision of this Court in this area of law. 443 U.S. 602-606.

Thus it has been held that civil courts have jurisdiction to protect churches, third parties and church members against an invasion of their contract rights. United Methodist Council v. Superior Court, 439 U.S. 1369 (1978); Thomas v. Lewis, 224 Ky 307, 6 S.W. 2d 255 (1928); Gipe v. Superior Court of Orange County, 124 Cal. App. 3d 617, 177 Cal. Rptr 590 (1981).

In ruling upon the purely contractual aspect of a minister's employment, courts have held that a minister employed for a given time cannot be arbitrarily discharged, since there is no legal distinction between a contract with a minister and his

congregation and other civil contracts for personal services. Congregation of Children of Israel v. Peres, 42 Tenn. (2 Coldw.) 620 (1865). Courts have found that a contract between a minister and his church, like any other civil contract, is entitled to the protection of the civil courts and they have refused to abide by the decision of an ecclesiastical body, upon the ground that it involved a breach of contract, Avery v. Tyringham, 3 Mass 160 (1807); and they have enquired into the organic rules and forms of procedure prescribed by the ecclesiastical body to see if they have been followed in dissolving a pastoral relation which involves a property right. LeBlanc v. Davis, 432 So. 2d 239 (1983, La.); Bennett v. Belton, 436 S.W. 2d 161, writ ref'd n.r.e., 442

S.W. 2d 679 (1969, Tex.); Wallace v. United Presbyterian Church, 194 Pa. 178, 45 A. 84 (1899).

In Waters v. Hargest, 593 S.W. 2d 364 (1979, Tex. Civ. App.), a case involving a dispute in a congregational church regarding whether a pastor would remain or be dismissed, a case directly in point with the present case, the Court of Civil Appeals of Texas took the position which the Chesapeake Circuit Court should have taken in this case.

In Waters the plaintiffs petitioned the court for an order compelling the calling of a congregational meeting of the entire membership of the church to determine whether the pastor should remain in that office. The defendants, who included the deacons and the pastor

alleged that there existed a valid and enforceable contract of employment between the church and the pastor which the plaintiffs were threatening to violate.

The trial court appointed a moderator to preside over a special meeting to be held by the congregation, and by a one vote majority of the members present at the meeting the pulpit of the church was declared vacated. The trial court then dismissed the case on the grounds that it involved "internal affairs" of the church and "only matters of an ecclesiastical nature." 593 S.W. 2d at 365.

On appeal to the Court of Civil Appeals of Texas, the dismissal by the trial court was reversed and the case was remanded for trial. In reaching

this decision, the Court of Civil Appeals spoke the following language which, except for the name of the pastor and the church, is directly applicable to the present case:

> "The court should not have dismissed the suit. The first amendment to the United States Constitution prohibits the civil courts from exercising jurisdiction over purely ecclesiastical matters involved in church related disputes, but it does not forbid those courts from adjudicating property rights of the church or of the members, so long as such rights can be determined by the application of neutral principles of law developed for use in all property disputes and which can be applied without "establishing" a church. Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed. 2d 775 (1979); Presbyterian Church v. Hull Church 393 U.S. 440, 89 S.Ct. 601, 2. L.Ed. 2d 658 (1969); Presbytery of the Covenant v. First Presbyterian Church of Paris, 552 S.W. 2d 865 (Tex. Civ. App. Texarkana 1977, no writ); Gray v. Saint Matthews Cathedral EndowmentFund, 544 S.W. 2d 488, 97 A.L.R. 3d 1197 (Tex. Civ. App. Texarkana 1976, writ ref'd n.r.e.).

Contractual rights are "property rights" within the meaning of the rule. Just as a church can contract with persons outside the church membership, it can contract with its own pastor, and so long as the determination of the parties' rights can be accomplished by the application of neutral principles of law without the necessity of adjudicating matters of church doctrine or determining matters of church government in a hierarchical church, the civil courts should not hesitate to take jurisdiction and adjudicate the controversy. See for example Mayhew v. Vanway, 371 S.W. 2d 90 (Tex. Civ. App. Houston 1963, no writ). It is undisputed here that the Zion Hill Baptist Church is a congregational church, being completely autonomous and governed by majority rule. There being no hierarchical constitution or regulations governing the right of the church to contract, and no church adjudicatories having jurisdiction to determine questions concerning such contracts, the controversy regarding Rev. Jones' alleged contract can be determined solely by the application of neutral principles of law." 593 S.W. 2d at 365.

For these same reasons, Reverend Little's contract rights should have been subjected to neutral principles of law, in a court of law, and it was a denial of due process to subject his rights to a nonjudicial dispute-resolution procedure. Reverend Little's case should be remanded to the Circuit Court of Chesapeake for a trial because:

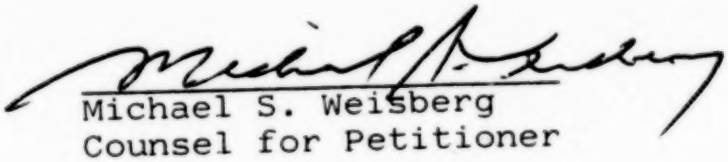
(a) He was totally denied a hearing or an opportunity for a hearing consistent with due process; and

(b) The nonjudicial procedure to which his rights were subjected is not a constitutionally permissible substitute for due process.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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